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| EXAMINER |
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LETT, THOMAS J

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| ART UNIT | PAPER NUMBER |
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2625

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09/04/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptomail@panitchlaw.com

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/822,617 | Applicant(s) WEISS, MARK A. | |
| | Examiner THOMAS J. LETT | Art Unit 2625 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 10-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 10-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/29/08</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to claims 1, 2 and 10-15 have been considered but are moot in view of the new grounds of rejection.
2. Examiner's new grounds of rejection occur as a result of amended claims 1, 2 and 10-35 as well as Applicant-initiated personal interview conducted 10 August 2009.
3. Applicant argues that the amended claims recite an "article of manufacture" for use in a proofing process which is one of the statutory categories.
4. Examiner responds that a set of colors is printed on a sheet of paper (figure 2A); another set of colors is printed on the same said sheet (figure 2B). Examiner reads the pre-printed color bar as "a mere arrangement of printed matter" and thus rejects the claims as not being within the statutory classes.
5. Applicant argues that the "major region" and "minor region" are not referring to "importance" or extent, but to "size".
6. Examiner responds that Applicant has not claimed size in any of the claims. The term "size" does not appear in the claim language.
7. Applicant argues that the regions labeled by the Examiner as being the blank region and marginal region do not meet the claim definitions.
8. Examiner responds that Applicant does not clearly define said regions in Applicant's specification nor in the claims which makes it difficult for anyone skilled in the art to define the exact location of the margin region and the blank region.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1, 12, 16, 20, 24 and 28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1, 12, 16, 20, 24 and 28 and their dependencies are directed to a sheet of paper (article of manufacture) with printed color data which are per se not statutory as printed matter. As per MPEP 706.03(a):

A. Printed Matter

For example, a mere arrangement of printed matter, though seemingly a “manufacture,” is rejected as not being within the statutory classes. See *In re Miller*, 418 F.2d 1392, 164 USPQ 46 (CCPA 1969); *Ex parte Gwinn*, 112 USPQ 439 (Bd. App. 1955); and *In re Jones*, 373 F.2d 1007, 153 USPQ 77 (CCPA 1967).

A user of the instant application is comparing a first printed color bar with a subsequently printed color bar to see if there is a visual color match, see Applicant's disclosure – paragraphs 0007, 0008 and 0039. A set of colors is printed on a sheet of paper (figure 2A); another set of colors is printed on the same said sheet (figure 2B). Examiner reads the pre-printed color bar as "a mere arrangement of printed matter" and thus rejects the claims as not being within the statutory classes.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 1, 12, 16, 20, 24 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The claimed "marginal region" is not defined in the specification. Further, the claimed "blank region" is not defined in the specification. Examiner is able to view at least two blank regions in figure 2A; a blank region above element 10 and a blank region below element 10. The specification discloses that color will be printed on a blank sheet of paper but does not describe a specific location on the blank sheet of paper, see paras. 0018 and 0035.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language..

11. Claims 1, 10-12,14-16,18-20, 22-24, 26-28 and 30-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Komori et al (US 20010042483 A1).

Regarding claim 1, Komori et al disclose an article of manufacture (color proofing print 4, page 6, paragraph 0083) for use in a proofing process comprising a sheet of paper that includes:

(a) a blank region (see lower portion of figure 13 which may not have an image pattern, para. 0083) for subsequent printing of a content image portion (Komori discloses that an image may or may not be printed in pattern region, see para. 0083); and

(b) a marginal region outside of the blank region, the marginal region including one or more standard color bars pre-printed thereon (similar to Applicant's disclosure on page 5, paragraph 0035, Komori et al "pre-prints" a color bar 4b on a blank color proof 4) and having no content image portion (no image is printed in the margin region, see fig. 13), and each of the one or more standard color bars having a plurality of color blocks, each color block reflecting a wavelength in the electromagnetic spectrum that represents a color selected from a color space (in fig. 13, each patch 4c represents a color block of the color spectrum of color chart 4b, see at least paras. 0023 and 0031),

wherein the blank region and the marginal region constitute the entire surface area of one side of the sheet of paper (see fig. 13).

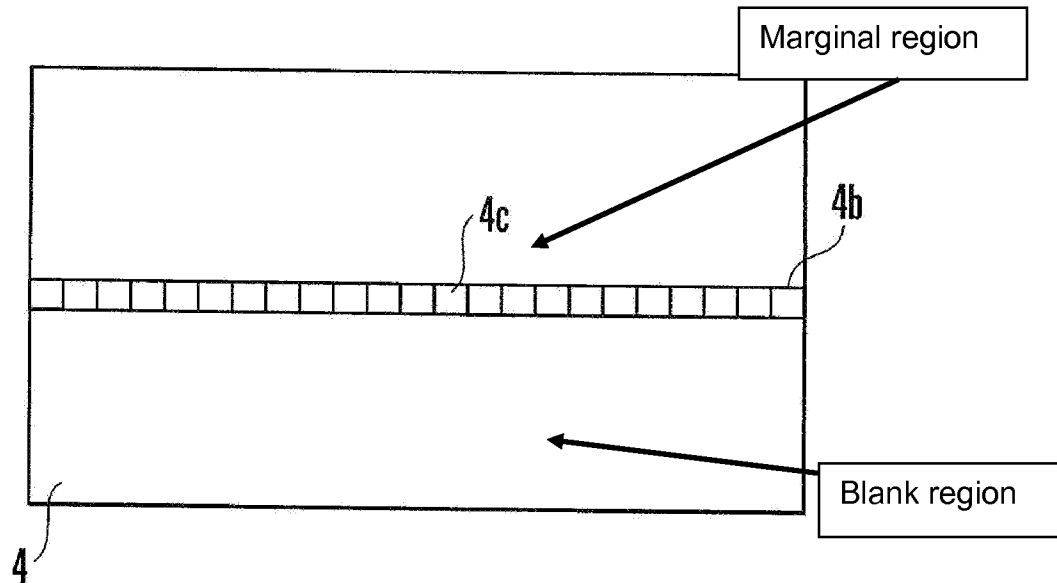


FIG. 13

Figure 13 of Komori et al

Regarding claim 10, Komori et al disclose then article of manufacture of claim 1 wherein the marginal region of the sheet of paper is a minor region of the sheet of paper and the blank region is a major region of the sheet of paper (see fig. 13; another representation can be seen in figure 3.).

Regarding claim 11, Komori et al disclose the article of manufacture of claim 1 wherein the sheet of paper is proofing paper (color proofing print 4, para. 0083).

Regarding claim 12, Komori et al disclose an article of manufacture (color proofing print 4, page 6, paragraph 0083) for use in a proofing process comprising a sheet of paper that includes:

(a) a marginal region (upper portion of figure 13 containing color bar 4b is “printed on the margin portion”, para. 0083) including one or more standard color bars pre-printed (similar to Applicant’s disclosure on page 5, paragraph 0035, Komori et al “pre-prints” a color bar 4b on a blank color proof 4) thereon and having no content image portion (no image is printed in the margin region, see fig. 13), and each of the one or more standard color bars having a plurality of color blocks, each color block reflecting a wavelength in the electromagnetic spectrum that represents a color selected from a color space (in fig. 13, each patch 4c represents a color block of the color spectrum of color chart 4b, see at least paras. 0023 and 0031); and

(b) a blank region (see lower portion of figure 13 which may not have an image pattern, para. 0083) outside of the marginal region for subsequent printing of a content image portion (Komori discloses that an image may or may not be printed in pattern region, see para. 0083),

wherein the marginal region and the blank region constitute the entire surface area of one side of the sheet of paper (see fig. 13).

Regarding claim 14, Komori et al disclose the article of manufacture of claim 12 wherein the marginal region is a minor region of the sheet of paper and the blank region is a major region of the sheet of paper (see fig. 13; another representation can be seen in figure 3.).

Regarding claim 15, Komori et al disclose the article of manufacture of claim 12 wherein the sheet of paper is proofing paper (color proofing print 4, para. 0083).

Regarding claim 16, Komori et al disclose an article of manufacture for use in a proofing process comprising a sheet of paper (color proofing print 4, page 6, paragraph 0083) that includes:

(a) a blank region (see lower portion of figure 13 which may not have an image pattern, para. 0083) for subsequent printing of a content image portion (image may or may not be printed in pattern region, see para. 0083); and

(b) a marginal region outside of the blank region, the blank region and the marginal region being adjacent to each other on only one side of their respective regions, the marginal region including one or more standard color bars pre-printed (similar to Applicant's disclosure on page 5, paragraph 0035, Komori et al pre-prints a color bar 4b on a blank color proof 4) thereon (upper portion of figure 13 containing color bar 4b is "printed on the margin portion", para. 0083), and each of the one or more standard color bars having a plurality of color blocks, each color block reflecting a wavelength in the electromagnetic spectrum that represents a color selected from a color space (in fig. 13, each patch 4c represents a color block of the color spectrum of color chart 4b, see at least paras. 0023 and 0031), wherein the blank region and the marginal region constitute the entire surface area of one side of the sheet of paper (see fig. 13).

Regarding claim 18, Komori et al disclose an article of manufacture of claim 16 wherein the marginal region of the sheet of paper is a minor region of the sheet of paper and the blank region is a major region of the sheet of paper (see fig. 13; another representation can be seen in figure 3.).

Regarding claim 19, Komori et al disclose an article of manufacture of claim 16 wherein the sheet of paper is proofing paper (color proofing print 4, para. 0083).

Regarding claim 20, Komori et al disclose an article of manufacture for use in a proofing process comprising a sheet of paper that includes:

(a) a marginal region including one or more standard color bars pre-printed (similar to Applicant's disclosure on page 5, paragraph 0035, Komori et al pre-prints a color bar 4b on a blank color proof 4) thereon (upper portion of figure 13 containing color bar 4b is "printed on the margin portion", para. 0083), and each of the one or more standard color bars having a plurality of color blocks, each color block reflecting a wavelength in the electromagnetic spectrum that represents a color selected from a color space (in fig. 13, each patch 4c represents a color block of the color spectrum of color chart 4b, and see at least paras. 0023 and 0031); and

(b) a blank region outside (see lower portion of figure 13 which may not have an image pattern, para. 0083) of the marginal region for subsequent printing of a content image portion, the blank region and the marginal region being adjacent to each other on only one side of their respective regions, wherein the marginal region and the blank region constitute the entire surface area of one side of the sheet of paper (see fig. 13).

Regarding claim 22, Komori et al disclose an article of manufacture of claim 20 wherein the marginal region of the sheet of paper is a minor region of the sheet of paper and the blank region is a major region of the sheet of paper (see fig. 13; another representation can be seen in figure 3.).

Regarding claim 23, Komori et al disclose an article of manufacture of claim 20 wherein the sheet of paper is proofing paper (color proofing print 4, para. 0083).

Regarding claim 24, Komori et al disclose an article of manufacture for use in a proofing process comprising a sheet of paper that includes:

(a) a blank region for subsequent printing of a content image portion (see lower portion of figure 13 which may not have an image pattern, para. 0083); and

(b) a marginal region outside of the blank region, the marginal region including one or more standard color bars pre-printed (similar to Applicant's disclosure on page 5, paragraph 0035, Komori et al pre-prints a color bar 4b on a blank color proof 4) thereon and only color bar-related indicia (upper portion of figure 13 containing color bar 4b is "printed on the margin portion", para. 0083), and each of the one or more standard color bars having a plurality of color blocks, each color block reflecting a wavelength in the electromagnetic spectrum that represents a color selected from a color space (in fig. 13, each patch 4c represents a color block of the color spectrum of color chart 4b, and see at least paras. 0023 and 0031), wherein the blank region and the marginal region constitute the entire surface area of one side of the sheet of paper (see fig. 13).

Regarding claim 26, Komori et al disclose an article of manufacture of claim 24 wherein the marginal region of the sheet of paper is a minor region of the sheet of paper and the blank region is a major region of the sheet of paper (see fig. 13; another representation can be seen in figure 3.).

Regarding claim 27, Komori et al disclose an article of manufacture of claim 24 wherein the sheet of paper is proofing paper (color proofing print 4, para. 0083).

Regarding claim 28, Komori et al disclose an article of manufacture for use in a proofing process comprising a sheet of paper that includes:

(a) a marginal region including one or more standard color bars pre-printed thereon and only color bar-related indicia (upper portion of figure 13 containing color bar 4b is “printed on the margin portion”, para. 0083), and each of the one or more standard color bars having a plurality of color blocks, each color block reflecting a wavelength in the electromagnetic spectrum that represents a color selected from a color space (in fig. 13, each patch 4c represents a color block of the color spectrum of color chart 4b, and see at least paras. 0023 and 0031); and

(b) a blank region outside of the marginal region for subsequent printing of a content image portion (see lower portion of figure 13 which may not have an image pattern, para. 0083), wherein the marginal region and the blank region constitute the entire surface area of one side of the sheet of paper (see fig. 13).

Regarding claim 30, Komori et al disclose an article of manufacture of claim 28 wherein the marginal region of the sheet of paper is a minor region of the sheet of paper and the blank region is a major region of the sheet of paper (see fig. 13; another representation can be seen in figure 3.).

Regarding claim 31, Komori et al disclose an article of manufacture of claim 28 wherein the sheet of paper is proofing paper (color proofing print 4, para. 0083).

Regarding claim 32, Komori et al disclose an article of manufacture of claim 1 wherein the blank region and the marginal region are adjacent to each other on only one side of their respective regions (see fig. 13).

Regarding claim 33, Komori et al disclose an article of manufacture of claim 12 wherein the blank region and the marginal region are adjacent to each other on only one side of their respective regions (see fig. 13).

Regarding claim 34, Komori et al disclose an article of manufacture of claim 1 wherein the marginal region includes only color bar-related indicia (upper portion of figure 13 containing color bar 4b is "printed on the margin portion", para. 0083).

Regarding claim 35, Komori et al disclose an article of manufacture of claim 12 wherein the marginal region includes only color bar-related indicia (upper portion of figure 13 containing color bar 4b is "printed on the margin portion", para. 0083).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2, 13, 17, 21, 25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komori et al (US 20010042483 A1) in view of Chalmers et al (USPN 5,953,990 A).

Regarding claim 2, Komori et al disclose the article of manufacture sheet of paper of claim 1 wherein marginal region of the sheet of paper further comprises one pre-printed standard color bar, the marginal region having a blank area adjacent to the

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pre-printed color bar (see fig. 13; another representation of the proofing print can be seen in figure 3.).

Komori et al does not expressly disclose a blank region for subsequent printing of a second color bar on a pre-printed color print.

Chalmers et al teach a test page (shown in figure 1) of blank regions for subsequent printing of second color bars 1A (shown in figure 2) for color standardization comparison with pre-printed color bars 1, col. 2, lines 6-27.

Komori et al and Chalmers et al are analogous art because they are from the similar problem solving area of printer management. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add the subsequent printing feature of Chalmers et al to the pre-printed color proof of Komori et al in order to obtain a region to compare color bars. The motivation for doing so would be to indicate differences in printed colors.

Regarding claim 13, Komori et al disclose the article of manufacture of claim 12 wherein the marginal region further comprises one pre-printed standard color bar, the marginal region having a blank area adjacent to the pre-printed color bar (see fig. 13; another representation of the proofing print can be seen in figure 3.).

Komori et al does not expressly disclose a blank region for subsequent printing of a second color bar on a pre-printed color print.

Chalmers et al teach a test page (shown in figure 1) of blank regions for subsequent printing of second color bars 1A (shown in figure 2) for color standardization comparison with pre-printed color bars 1, col. 2, lines 6-27.

Komori et al and Chalmers et al are analogous art because they are from the similar problem solving area of printer management. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add the subsequent printing feature of Chalmers et al to the pre-printed color proof of Komori et al in order to obtain a region to compare color bars. The motivation for doing so would be to indicate differences in printed colors.

Regarding claim 17, Komori et al disclose an article of manufacture of claim 16 wherein the marginal region of the sheet of paper further comprises one pre-printed standard color bar, the marginal region having a blank area adjacent to the pre-printed color bar (see fig. 13; another representation of the proofing print can be seen in figure 3.).

Komori et al does not expressly disclose a blank region for subsequent printing of a second color bar on a pre-printed color print.

Chalmers et al teach a test page (shown in figure 1) of blank regions for subsequent printing of second color bars 1A (shown in figure 2) for color standardization comparison with pre-printed color bars 1, col. 2, lines 6-27.

Komori et al and Chalmers et al are analogous art because they are from the similar problem solving area of printer management. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add the subsequent printing feature of Chalmers et al to the pre-printed color proof of Komori et al in order to obtain a region to compare color bars. The motivation for doing so would be to indicate differences in printed colors.

Regarding claim 21, Komori et al disclose an article of manufacture of claim 20 wherein the marginal region of the sheet of paper further comprises one pre-printed standard color bar, the marginal region having a blank area adjacent to the pre-printed color bar (see fig. 13; another representation of the proofing print can be seen in figure 3.).

Komori et al does not expressly disclose a blank region for subsequent printing of a second color bar on a pre-printed color print.

Chalmers et al teach a test page (shown in figure 1) of blank regions for subsequent printing of second color bars 1A (shown in figure 2) for color standardization comparison with pre-printed color bars 1, col. 2, lines 6-27.

Komori et al and Chalmers et al are analogous art because they are from the similar problem solving area of printer management. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add the subsequent printing feature of Chalmers et al to the pre-printed color proof of Komori et al in order to obtain a region to compare color bars. The motivation for doing so would be to indicate differences in printed colors.

Regarding claim 25, Komori et al disclose an article of manufacture of claim 24 wherein the marginal region of the sheet of paper further comprises one pre-printed standard color bar (similar to Applicant's disclosure on page 5, paragraph 0035, Komori et al pre-prints a color bar 4b on a blank color proof 4), the marginal region having a blank area adjacent to the pre-printed color bar (see fig. 13; another representation of the proofing print can be seen in figure 3.).

Komori et al does not expressly disclose a blank region for subsequent printing of a second color bar on a pre-printed color print.

Chalmers et al teach a test page (shown in figure 1) of blank regions for subsequent printing of second color bars 1A (shown in figure 2) for color standardization comparison with pre-printed color bars 1, col. 2, lines 6-27.

Komori et al and Chalmers et al are analogous art because they are from the similar problem solving area of printer management. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add the subsequent printing feature of Chalmers et al to the pre-printed color proof of Komori et al in order to obtain a region to compare color bars. The motivation for doing so would be to indicate differences in printed colors.

Regarding claim 29, Komori et al disclose an article of manufacture of claim 28 wherein the marginal region of the sheet of paper further comprises one pre-printed standard color bar, the marginal region having a blank area adjacent to the pre-printed color bar (see fig. 13; another representation of the proofing print can be seen in figure 3.).

Komori et al does not expressly disclose a blank region for subsequent printing of a second color bar on a pre-printed color print.

Chalmers et al teach a test page (shown in figure 1) of blank regions for subsequent printing of second color bars 1A (shown in figure 2) for color standardization comparison with pre-printed color bars 1, col. 2, lines 6-27.

Komori et al and Chalmers et al are analogous art because they are from the similar problem solving area of printer management. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add the subsequent printing feature of Chalmers et al to the pre-printed color proof of Komori et al in order to obtain a region to compare color bars. The motivation for doing so would be to indicate differences in printed colors.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THOMAS J. LETT whose telephone number is (571) 272-7464. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Coles can be reached on (571) 272-7402. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/THOMAS J LETT/

Examiner, Art Unit 2625

/Dov Popovici/

Primary Examiner, Art Unit 2625